

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL UNION OF OPERATING
ENGINEERS, STATIONARY ENGINEERS
LOCAL 39 PENSION TRUST FUND,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON
CORPORATION, *et al.*,

Defendants.

No. C 11-03620 WHA

**ORDER ENTERING
PROTECTIVE ORDER
SUBJECT TO
STATED CONDITIONS**

The parties request entry of a protective order in this action. The parties have not been able to reach agreement on a proposed stipulated protective order. Because the Court deems it to be appropriate, the model stipulated protective order for standard litigation (appended as Exhibit A and modified to omit reference to stipulation) which has been approved by the Northern District of California is hereby **ENTERED**, subject to the following conditions, including adherence to the Ninth Circuit's strict caution against sealing orders (as set out below):

1. The parties must make a good-faith determination that any information designated "confidential" truly warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure. Designations of material as "confidential" must be narrowly tailored to include only material for which there

1 is good cause. A pattern of over-designation may lead to an order un-designating
2 all or most materials on a wholesale basis.

3 2. In order to be treated as confidential, any materials filed with the
4 Court must be lodged with a request for filing under seal in compliance with Civil
5 Local Rule 79-5. Please limit your requests for sealing to only those narrowly
6 tailored portions of materials for which good cause to seal exists. Please include
7 all other portions of your materials in the public file and clearly indicate therein
8 where material has been redacted and sealed. Each filing requires an
9 individualized sealing order; blanket prospective authorizations are no longer
10 allowed by Civil Local Rule 79-5.

11 3. Chambers copies should include all material — both redacted and
12 unredacted — so that chambers staff does not have to reassemble the whole brief
13 or declaration. Although chambers copies should clearly designate which
14 portions are confidential, chambers copies with confidential materials will be
15 handled like all other chambers copies of materials without special restriction, and
16 will typically be recycled, not shredded.

17 4. In *Kamakana v. Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006),
18 the Ninth Circuit held that *more* than good cause, indeed, “compelling reasons”
19 are required to seal documents used in dispositive motions, just as compelling
20 reasons would be needed to justify a closure of a courtroom during trial.
21 Otherwise, the Ninth Circuit held, public access to the work of the courts will be
22 unduly compromised. Therefore, no request for a sealing order will be allowed
23 on summary judgment motions (or other dispositive motions) unless the movant
24 first shows a “compelling reason,” a substantially higher standard than “good
25 cause.” This will be true regardless of any stipulation by the parties. *Counsel are*
26 *warned that most summary judgment motions and supporting material should be*
27 *completely open to public view.* Only social security numbers, names of
28 juveniles, home addresses and phone numbers, and trade secrets of a compelling

1 nature (like the recipe for Coca Cola, for example) will qualify. If the courtroom
2 would not be closed for the information, nor should any summary judgment
3 proceedings, which are, in effect, a substitute for trial. Motions *in limine* are also
4 part of the trial and must likewise be laid bare absent compelling reasons. Please
5 comply fully. Noncompliant submissions are liable to be stricken in
6 their entirety.

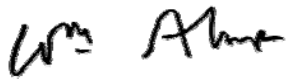
7 5. Any confidential materials used openly in court hearings or trial
8 will not be treated in any special manner absent a further order.

9 6. This order does not preclude any party from moving to
10 undesignate information or documents that have been designated as confidential.
11 The party seeking to designate material as confidential has the burden of
12 establishing that the material is entitled to protection.

13 7. The Court will retain jurisdiction over disputes arising from the
14 proposed and stipulated protective order for only **NINETY DAYS** after final
15 termination of the action.
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17 **IT IS SO ORDERED.**

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19 Dated: January 5, 2012.

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22 WILLIAM ALSUP
23 UNITED STATES DISTRICT JUDGE
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